

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF THE MATTER OF THE  
APPLICATION OF BULLDOG COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 8153-M1** **AQB 21-31**

**JAYHAWK COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 8152-M1** **AQB 21-32**

**LONGHORN COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 8349-M2** **AQB 21-33**

**COWBOY CDP  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 7877-M1** **AQB 21-34**

**WILDCAT COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 7474-M2** **AQB 21-35**

**MAVERICK COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 7565-M2** **AQB 21-39**

**SPARTAN COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 7681-M2** **AQB 21-40**

**TIGER COMPRESSOR STATION  
(XTO ENERGY) FOR AN AIR QUALITY  
PERMIT, NO. 7623-M2** **AQB 21-41**

**HEARING OFFICER'S REPORT**

**I. INTRODUCTION**

XTO currently holds Part 72 New Source Review ("NSR") Permits for the eight Facilities: Bulldog, Jayhawk, Longhorn, Wildcat, Maverick, Spartan, and Tiger Facilities are compressor stations (collectively "the compressor stations"). The Cowboy Central Delivery Point ("Cowboy CDP" or "Cowboy") is a gas processing facility. During the initial construction

phase, XTO determined that revisions were required to the originally issued NSR permits to revise and/or modify them as designs and equipment specifications were finalized and modes of operation were updated to increase efficiency. XTO Ex. 5 at 10.

**a. Revision of Construction Permits**

A revision of an NSR permit is governed by 20.2.72 NMAC and required for modifications to the Facilities. 20.2.72.200 NMAC. A modification is defined as “any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source, or which results in the emission of any regulated air contaminant not previously emitted . . .” 20.2.72.7.P NMAC.

**b. Permit Issuance**

After the determination that an application is administratively complete, NMED must decide whether a permit should be granted, granted with conditions, or denied. 20.2.72.207 NMAC. If there is significant public interest, the Secretary may delay issuing the permit and require a hearing be held. *Id.* NMED has specific bases to deny a permit revision. 20.2.72.208 NMAC.

**c. XTO Facilities Subject to Permit Applications**

XTO’s compressor stations aid in the movement and transport of natural gas from the well site. XTO Ex. 5 at 7. “The compressors provide the natural gas with adequate pressure to move [] through the pipeline and are necessary to overcome the pressure losses due to friction, distance, and elevation changes that would otherwise slow the movement of gas in the pipeline.” *Id.* The Cowboy gas plant subject to this matter, has several different purposes. Natural gas, natural gas liquids (including hydrocarbons), and crude oil are received at the facility. *Id.* at 8.

An amine unit is then used to remove carbon dioxide and hydrogen sulfide from the gas. *Id.* A molecular sieve removes moisture, then stabilization towers and cryogenic distillation equipment separate the dry gas from the natural gas liquids. *Id.* Cowboy CDP also includes an oil stabilization process. *Id.* During stabilization, natural gas liquids are removed from oil in a stabilization tower and produced water is separated from the oil. *Id.* At this point, the oil is stored in several large, internal, floating roof tanks before transport via pipeline. *Id.* Each of the Facilities are described briefly below.

i. Bulldog Compressor Station, Permit No. 8153-M1

The Bulldog Compressor Station is in Eddy County, New Mexico. [Bulldog AR 1, 0013] NMED issued NSR Permit No. 8153 for Bulldog on May 7, 2019. [Bulldog AR 7, 0274] The application requested a significant revision to NSR Permit No. 8153. [Bulldog AR 7, 0273]

ii. Jayhawk Compressor Station, Permit No. 8152-M1

The Jayhawk Compressor Station is in Lea County, New Mexico. [Jayhawk AR 1, 010] NMED issued NSR Permit No. 8152 for Jayhawk on May 7, 2019. The application requested a significant revision to NSR Permit No. 8152. [Jayhawk AR 13, 464]

iii. Longhorn Compressor Station, Permit No. 8394-M2

The Longhorn Compressor Station is in Eddy County, New Mexico. [Longhorn AR 1, 0012] NMED issued GCP O&G Permit No. 8394 for Longhorn on June 13, 2019, and NSR Permit No. 8349-M1 on January 16, 2020. [Longhorn AR 7, 0253] The development plans for the Longhorn facility changed necessitating an NSR Permit.

The air permit application requested a significant revision to NSR Permit No. 8394-M1. [Longhorn AR 7, 0252]

iv. Cowboy CDP, Permit No. 7877-M1

The Cowboy Central Delivery Point is a gas plant located in Eddy County, New Mexico. [Cowboy AR 1, 0006] NMED issued NSR Permit No. 7877 for Cowboy on November 16, 2018. [Cowboy AR 4, 0408] The air permit application requested a significant revision to NSR Permit No. 7877. [Cowboy AR 4, 0405]

v. Wildcat Compressor Station, Permit No. 7474-M2

The Wildcat Compressor Station is in Eddy County, New Mexico. [Wildcat AR 3, 231] NMED issued NSR Permit 7474 for Wildcat on January 3, 2018, and NSR Permit 7474-M1 on February 6, 2019. [Wildcat AR 18, 279] The air permit application requested a significant revision to NSR Permit. [Wildcat AR 18, 278] NMED initially issued the revised permit for Wildcat on February 19, 2021, but the revision was withdrawn for “procedural flaws.” [Wildcat AR 15, 271]

vi. Maverick Compressor Station, Permit No. 7565-M2

The Maverick Compressor Station is in Eddy County, New Mexico. [Maverick AR 1, 010] NMED issued NSR Permit 7565 for Maverick on March 7, 2018, and NSR Permit 7565-M1 on February 6, 2019. [Maverick AR 13, 663] The air permit application requested a significant revision to NSR Permit 7565-M1. [Maverick AR 13, 661]

vii. Spartan Compressor Station, Permit No. 7681-M2

The Spartan Compressor Station is in Eddy County, New Mexico. [Spartan AR 1, 011] NMED issued NSR Permit 7681 for Spartan on June 13, 2018, and NSR Permit

7681-M1 on February 7, 2019. [Spartan AR 10, 327] The air permit application requested a significant revision to NSR Permit No. 7681-M1. [Spartan AR 10, 327]

viii. Tiger Compressor Station, Permit No. 7623-M2

The Tiger Compressor Station is in Eddy County, New Mexico. [Tiger AR 1, 011]

NMED issued NSR Permit 7623 for Tiger on May 2, 2018, and NSR Permit 7623-M1 on February 7, 2019. [Tiger AR 10, 327] The air permit application requested a significant revision to NSR Permit No. 7623-M1. [Tiger AR 10, 326]

The applications demonstrate that if operated at maximum capacity, no Facility would cause or contribute to an exceedance of applicable air quality standards. [Bulldog AR 1, 0001-0242, AR 0275; Jayhawk AR 1, 001-213, AR 13, 467; Longhorn AR 1, 0001-0222, AR 7, 0254; Cowboy AR 1, 0001-0348, AR 4, 0409; Wildcat AR 2, 052-228, AR 18, 280; Maverick AR 3, 326-618, AR 13, 664; Spartan AR 1, 001-287, AR 13, 664; Tiger AR 1, 001-288]

After a complete administrative and technical review, NMED issued eight draft permits, approving the revisions with specific conditions for each of the XTO Facilities. [Bulldog AR 8, 0279-0332; Jayhawk AR 14, 474-525; Longhorn AR 8, 0259-0311; Cowboy AR 2, 0349-0382; Wildcat AR 19, 286-335; Maverick AR 14, 671-724; Spartan AR 11, 334-387; Tiger AR 11, 333-386]; NMED Am. Ex. 24 at 17.

#### **d. Current Proceedings**

This matter is before the Hearing Officer based on WEG's request for a public hearing and its demonstration of significant public interest in the proposed permits. New Mexico Environment Department Cabinet Secretary, James Kenney ("Cabinet Secretary") granted public hearings for XTO's three permit applications regarding the Bulldog, Jayhawk, and Longhorn

facilities in a Public Hearing Determination dated February 11, 2021.<sup>1</sup> In a separate Public Hearing Determination dated June 1, 2021, the Cabinet Secretary granted public hearings for XTO's remaining five permit applications regarding the Cowboy, Wildcat, Maverick, Spartan, and Tiger facilities.<sup>2</sup> On June 24, 2021, the Cabinet Secretary subsequently ordered public hearings be held in the matters of all eight applications and appointed Gregory Chakalian to serve as Hearing Officer in these matters.<sup>3</sup> Following a July 7, 2021 scheduling conference, the Hearing Officer consolidated the XTO permit hearings together, along with two other public hearings, all of which involved construction permit applications for a total of ten oil and gas facilities in southeast New Mexico.<sup>4</sup>

A public hearing was held from October 25-26, 2021.

NMED's Office of General Counsel represented NMED through Christopher J. Vigil. NMED called the following individuals as witnesses: Rhonda Romero, Eric Peters, Angela Raso, Kathleen Primm, James Nellessen, Kirby Olson, Urshula Bajracharya, Vanessa Springer, Asheley Coriz, Julia Kuhn, and Melinda Owens.

COPC was represented by Scott Janoe and Harrison Reback of Baker Botts LLP. COPC called Dr. Roberto Gasparini as a witness. Dr. Gasparini is the Legal, Audit, & Enforcement Support Program Director at Spirit Environmental, LLC in Houston, Texas.

XTO was represented by Louis Rouse and Kristen Burby of Montgomery & Andrews, PA. XTO called Randy Parmley, Vice President, and principal engineer at DiSorbo Consulting, as a witness.

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<sup>1</sup> New Mexico Environment Department, *Public Hearing Request Determination for WEG Related Permit Applications* (Feb. 11, 2021).

<sup>2</sup> New Mexico Environment Department, *Public Hearing Request Determination for WEG Related Permit Applications* (Jun. 1, 2021). The February 11, 2021, Public Hearing Determination granted public hearings for the Bulldog, Jayhawk, and Longhorn facilities only as to the issues not addressed in EIB 20-21(A) and 20-33(A), the June 1, 2021 Public Hearing Determination did not likewise restrict the issues that could be considered during the public hearings for the Cowboy, Wildcat, Maverick, Spartan, and Tiger facilities.

<sup>3</sup> Notice of Hearing and Appointment of Hearing Officer, AQB 21-31 – AQB 21-35 and AQB 21-39 – AQB 21-41 (Jun. 24, 2021).

<sup>4</sup> Scheduling Order, AQB 21-31 et al. (Jul. 20, 2021).

Crestwood was represented by Eric Waeckerlin and Courtney Shephard of Brownstein Hyatt Farber Schreck, LLP. Crestwood called Moshe Wolfe, senior environmental engineer for Crestwood, and Adam Erenstein, principal consultant with Trinity Consultants, as witnesses.

WEG was represented by Matthew Nykiel. WEG called Jeremy Nichols, Climate and Energy Program Director for WEG, as its sole witness.

**e. Burdens and Standards for Decision**

20.1.4.400.A(1) NMAC establishes the burdens of persuasion for each party to the hearing and states: “Burden of Persuasion: The Applicant or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed. Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” In turn, 20.1.4.400.A(3) NMAC states that “[t]he Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.”

In addition, New Mexico’s minor source permitting regulations at 20.2.72.207.D NMAC state that “[t]he department shall grant the permit, grant the permit subject to conditions, or deny the permit based on information contained in the department’s administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, a statement of matters officially noticed, and if a public hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit revision should be approved.”

The determination of whether to issue a Draft Permit must be based on the evidence in the Hearing Record as defined by 20.1.4.7 NMAC.

**f. Public Comment<sup>5</sup>**

General comment (non-technical) was taken from the public before and during the public hearing, both in writing and as sworn testimony. Five members of the public submitted written comment, one in favor and four opposed to the approval of the Draft Permits. The public member in favor cited fairness of rules and regulations for companies to operate in New Mexico. Those against, cited the air quality and ozone levels in Lea and Eddy Counties and the link between air pollution and climate change. Fourteen public members spoke during the two-day hearing (some of the members had also submitted written comment), all voiced their opposition to the air quality construction permits. The reasons mirrored the written comments but more focused on the potential for ozone pollution produced by oil and gas Facilities to harm human health and the environment. The comments were general in nature.

**II. APPLICABLE LAW**

New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 to 74-2-17

New Mexico Air Quality Regulations - Construction Permits, 20.2.72 NMAC

New Mexico Environment Department Permitting Procedures – 20.1.4 NMAC

**III. RECOMMENDATION**

Based upon the Hearing Record as defined in 20.1.4.7 NMAC, including the post-hearing submittals, I recommend that the proposed final Draft Permits be approved, as set forth in the Record with specific conditions to protect the public health and the environment. What follows is

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<sup>5</sup> Public comment was taken in reference to all ten (10) permits during the consolidated public hearing.



drawn from XTO, NMED, and WEG’s proposed findings of fact and conclusions of law based on the evidence that I found relevant, reliable and credible.

#### **IV. FINDINGS OF FACT**

##### **a. General Findings of Fact**

1. XTO currently holds NSR permits for each of the Bulldog Compressor Station, the Jayhawk Compressor Station, the Longhorn Compressor Station, the Cowboy CDP, the Wildcat Compressor Station, the Maverick Compressor Station, the Spartan Compressor Station, and the Tiger Compressor Station (“Facilities”). XTO Ex. 5 at 10.
2. The proposed modifications at each of the Facilities are typical and can be expected after construction details become finalized. XTO Ex. 5 at 10.
3. On June 20, 2021, eight XTO permit revision applications were consolidated into one public hearing with two non-XTO applications. Scheduling Order, July 20, 2021.
4. A hearing was scheduled to begin on October 25, 2021 and continue on consecutive days. Id.
5. On October 12, 2021, XTO filed a Statement of Intent to Provide Technical Testimony on the eight XTO permits revisions. XTO Statement of Intent.
6. NMED submitted a Statement of Intent to Provide Technical Testimony on all eight XTO permit revisions on October 12, 2021. NMED Statement of Intent.
7. WEG submitted a Statement of Intent to Provide Technical Testimony on all eight XTO permit revisions on October 12, 2021. WEG Statement of Intent.
8. On September 22, 2021, NMED published legal notice of the public hearing, listing the ten permit applications in both English and Spanish in the Carlsbad Current Argus. [Bulldog AR 13-14, 0352-0370]

9. On September 23, 2021, NMED published legal notice of the public hearing, listing the ten permit applications in both English and Spanish in the Albuquerque Journal. [Bulldog AR 15-16, 0371-0376]
10. On September 24, 2021, NMED published legal notice of the public hearing, listing the ten permit applications in both English and Spanish in the Hobbs News-Sun. [Jayhawk AR 24-25, 619-624]
11. Public Service Announcements were requested at KZOR FM (Hobbs Radio), Carlsbad Radio, and KENW (Eddy and Lea Radio) radio stations on October 5, 2021. [Bulldog AR 17-19, 0377-0386]
12. On October 12, 2021, XTO, Crestwood New Mexico Pipeline LLC (“Crestwood”), and ConocoPhillips Company (“ConocoPhillips”) submitted a pre-hearing motion in limine requesting that the Hearing Officer issue an order precluding WEG from offering any documents, testimony, or other evidence related to attainment of the 8-Hour Ozone National Ambient Air Quality Standards (“NAAQS”) in Eddy and Lea Counties and that any of the proposed permitting actions will cause or contribute to a violation of the ozone NAAQS based on the current statuses of the counties (collectively, “the ozone issues”). Joint Motion in Limine, October 12, 2021.
13. On October 20, 2021, the Hearing Officer held a status conference with all parties to clarify scheduling, order of testimony, and when the Hearing Officer would decide the ozone issues given the abbreviated timeline for motion practice outlined by an Order Granting In-Part Stipulation. At the call, it was determined that parties would meet thirty minutes prior to the start of the hearing, where the Hearing Officer would hearing oral argument and issue a decision and reasons in support thereof.

14. WEG filed a response to the Joint Motion in limine on October 22, 2021, requesting the Hearing Officer deny the Joint Motion. WEG Response to Joint Motion, October 22, 2021.
15. Prior to the start of the hearing, the parties' counsel met with the Hearing Officer to argue the Joint Motion and response. The preliminary matter was transcribed verbatim by the court-reporter and held in a break-out room on the Zoom platform. The Hearing Officer determined that based on the parties stipulated facts and the attached January 2021 EIB decision in 20-21(A) and 20-33(A) (WEG Petitioner/Appellant) on point, testimony on ozone and compliance with the ozone NAAQS was not relevant to the matters at issue in the hearing<sup>6</sup>. The Hearing Officer verbally issued his decision that no testimony related to the ozone issues would be permitted in the hearing. To gain admission into evidence, the parties amended their exhibits to redact the irrelevant testimony. Importantly, unredacted exhibits submitted on October 12, 2021, were received as offers of proof. Tr. Vol. 1, 40:13-19 (Chakalian).
16. A hearing was held on this matter on Monday, October 25, 2021, and continued until Tuesday, October 26, 2021. Tr. Vol. 1, 14:11-16 (Chakalian); Tr. Vol. 2, 289:1-4 (Chakalian).
17. The hearing was held both virtually via ZOOM and at a location in the area affected by the applications and began at approximately 9:00 AM each day. Tr. Vol. 1, 1:23-25 (Court Reporter); Tr. Vol. 2, 283:23-25 (Court Reporter).
18. At the hearing, NMED, WEG, and XTO presented witnesses who testified on the permit applications and draft permits. XTO presented witness Randy Parmley, WEG presented witness Jeremy Nichols, and NMED presented witnesses Rhonda Romero, Eric Peters, Angela

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<sup>6</sup>“ I'm going to start with page 22 of the final order, conclusion number 100. Pursuant to long-standing EPA and NMED guidance, for a source to be considered to cause or contribute to ozone concentrations in excess of NAAQS, its impacts on ozone concentrations must be above the Significant Impact Level as established by the EPA. Now, we haven't even talked about Significant Impact Level because that doesn't come into consideration until a PSD is in effect, and PSD is not for minor sources. Sources that emit below 250 tons per year of an ozone precursor are minor sources for purposes of the Board's PSD permitting regulations. Pursuant to EPA guidance, NMED guidance and the Board's permitting regulations, which we are using today, a permit applicant for a minor source is not required to make an individual demonstration of its impacts on ambient ozone concentrations. So, if a permit applicant for a minor source is not required to make an individual demonstration of its impact on ambient ozone concentrations, then I don't see how it's relevant to accept evidence to controvert that.” Tr. Vol. 1, 31:17,32:12. (Chakalain).

Raso, James Nellessen, Kirby Olson, Urshula Bajracharya, Julia Kuhn, Vanessa Springer, and Melinda Owens. Tr. Vol. 1, 6-8.

19. XTO's witness, Randy Parmley has over 35 years of experience in air quality consulting, including extensive experience with new source review permitting. He holds two Bachelors of Science Degrees in Natural Science/Chemistry and Environmental Engineering, and is a registered professional engineer. XTO Ex. 4.
20. Mr. Parmley testified about the eight XTO Facilities that are the subject of this hearing. He described generally what types of Facilities these are and what they do as well as typical equipment found on these sites. See XTO Ex. 5 at 6-8.
21. Mr. Parmley testified that each of the applications meet the applicable requirements to be approved under 20.2.72 NMAC. XTO Ex. 5 at 11.
22. After Mr. Parmley's overview, he addressed comments received on each of the applications including: public notice, toxic air pollutants, enforceability of startup, shutdown, maintenance and malfunction ("SSM/M") emission limits, hazardous air pollutant ("HAP") emissions, VOC and SO<sub>2</sub> limits for glycol dehydrators, site aggregation, 75% fugitive reduction factor for implementing a leak detection and repair program, air dispersion modeling, modeled NO<sub>2</sub> background concentrations, use of certain monitors for background concentration values, environmental justice, and facility compliance with Title V. See XTO Ex. 5.
23. Mr. Parmley concluded that each of the permit revisions, including facility modifications, in this matter should be approved because if the Facilities operate in conformance with the terms and conditions of the current draft permits, they will comply with all applicable air quality regulations and federal and state ambient air quality standards. XTO Ex. 5 at 38.

24. At the hearing, Mr. Parmley renewed his conclusions from his pre-filed written testimony. Tr. Vol. 1, 112:5-14 (Parmley). He also presented an overview of how a compressor station works, (Tr. Vol. 1, 113:20-117:11 (Parmley)) and what a gas processing plant looks like (Tr. Vol. 1, 119:15-121:19 (Parmley)).
25. Mr. Parmley explained the enforceability of startup, shutdown, maintenance, and malfunction (“SSM/M”) emission limits. He described the calculations required and how the volume of gas is known. The volume of gas is known because the volume in the equipment is known and when that is combined with a gas composition analysis, it is easy to calculate emissions. Tr. Vol. 1, 124:5-14 (Parmley).
26. Mr. Parmley discussed annual flaring calculations and how there are both hourly and annual emission limits in the permits that create a legally and practicably enforceable limit for those emissions. Tr. Vol. 1, 126:1-18 (Parmley).
27. Mr. Parmley discussed facility aggregation. He described that for a facility to be aggregated with a nearby facility for permitting purposes you need three things: (1) the Facilities need to belong to the same industrial grouping, meaning they have the same two-digit SIC code, (2) the Facilities must be contiguous and adjacent, and (3) the Facilities must be under common control. Tr. Vol. 1, 127:19-24 (Parmley). He explained that it would be inappropriate to aggregate the Cowboy, Tiger, and Spartan Facilities as proposed by WEG because they do not meet all three of these criteria. Tr. Vol. 1, 128:1-15 (Parmley).
28. Mr. Parmley addressed the modeling that was done for the applications and how it was done consistent with NMED Modeling Guidelines. Tr. Vol. 1, 131:15-17 (Parmley). He explained how background modeling concentrations were chosen and how they represent a conservative estimate for each of the Facilities. Tr. Vol. 1, 132:6-133:6 (Parmley).

29. Finally, Mr. Parmley testified that it is his opinion that NMED fulfilled its obligations under the executive order for environmental justice by using EJSCREEN to create a Public Involvement Plan. Tr. Vol. 1, 133:14-134:9 (Parmley).
30. WEG's witness Jeremy Nichols, has experience in participating in air quality regulation from the advocacy perspective having provided commentary on numerous rules, permits, and policies at the state and federal levels. Mr. Nichols has some college experience having completed some coursework in Geology and Women's Studies, however he does not hold any college degrees. WEG Ex. 2.
31. Mr. Nichols provided prefiled "technical" testimony on each of the XTO Facilities, however the issues brought up for each separate facility were substantially similar. To avoid being unduly repetitious, Mr. Nichols consolidated his written testimony as applied to each facility. The issues called out by Mr. Nichols in his written testimony included: issues with legal notice, enforceability of SSM/M emission limits, compliance with Title V, compliance tests, environmental justice, pneumatic controllers, NO<sub>2</sub> ambient air quality standards, lack of a modeling protocol, use a modeling report dated for 2019, legal notice to nearby Carlsbad Caverns, procedural concerns around an issued air permit, and excess emissions. *See* WEG Am. Ex. 1.
32. Mr. Nichols' concluded in his testimony that none of the permit applications nor NMED's proposed permits demonstrate that the permits comply with the requirements in the relevant state and federal statutes and regulations. WEG Am. Ex. 1 at 3.
33. Mr. Nichols testified that of the original issues raised in public comment by WEG, only three remain unresolved. Tr. Vol. 2, 315:21-316:3 (Nichols). Those three issues are: (1) adequacy of

legal notice, (2) enforceability of SSM/M emission limits, and (3) compliance with the Executive order on Environmental Justice. Id.

34. During his testimony an objection was raised seeking to disqualify Mr. Nichols as a technical expert based on his resume. Tr. Vol. 2, 342:20, 346:7. The parties voir dire revealed that Mr. Nichols did not have any technical training that would qualify him to provide an expert opinion or technical testimony regarding air quality, oil, and gas operations (including SSM/M), engineering, or environmental justice. Tr. Vol. 2, 333:17. The Hearing Officer reasoned that based on the definition of technical testimony pursuant to 20.1.4.7.A(22) NMAC (“as “scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing”) it was clear that WEG’s only witness lacked sufficient background or training to offer specialized, technical testimony on any issue. Further, Mr. Nichols resume made it clear that he does not have a law degree, is not a licensed attorney, and admitted he is not qualified to interpret regulations or otherwise offer legal testimony. Mr. Nichols’ testimony was therefore given the weight of “general” comment. *See* 20.1.4.300.B(2) NMAC.

35. Moreover, Mr. Nichols agreed he did not have any specialized training that would elevate his testimony above lay testimony. Tr. Vol. 2, 344:12. To the extent WEG’s testimony advances policy arguments, such policy arguments may not serve as a basis to deny a draft permit and do not qualify as “technical testimony.” *See* NMAC 2.2.72.208. In sum, the general testimony WEG provided on the issues it did not concede at the hearing failed to provide any evidence against issuing the Draft Permits.

36. Toward the end of the Hearing, a verbal motion was made to strike the entire direct testimony of Mr. Nichols. After hearing additional argument from the parties, the Hearing Officer overruled the objection, reasoning that the parties had ample time to file a timely motion in limine to allow the Hearing Officer the time necessary to consider the drastic remedy.
37. Regarding public notice, Mr. Nichols stated that WEG is concerned that NMED did not provide an email address for the public to provide comment to for Bulldog, Longhorn, Cowboy, Wildcat, and Jayhawk. Vol. 2, 316:8-21 (Nichols).
38. Mr. Nichols asserted that lack of an email address and limiting public comment to mailing only “may have limited the public involvement inappropriately, particularly in light of the COVID-19 pandemic.” Tr. Vol. 2, 316:11-25 (Nichols).
39. About the issue of the email address not being included in the notice for the Bulldog, Longhorn, and Wildcat applications, Bureau staff testified that, at the time when the notice of the application was due to be published,
- a permit writer has not been assigned and therefore their email address cannot be included in the applicant’s notice. While the standard text for the applicant’s notice states that comments should be submitted in writing, it also provides a toll-free phone number that would allow any interested party to reach the Bureau with questions. That provides an opportunity to register an objection or concern to mailing comments, and to request an alternative submission method. No phone calls making such a request were received on this permit. In response to the concern about the AQB notice specifying comments must be submitted in writing, AQB’s re-publication of the public notice for several other permits did not generate any additional public interest from any other party for those permits. That result on the other permits indicates that WildEarth Guardians assertion that the omission of an email address prevented other interested parties from providing comment is unlikely to be correct.
- [Bulldog CS: NMED Exhibit 21 at 8; Longhorn CS: NMED Exhibit 22 at 8; Wildcat CS: NMED Exhibit 35 at 8-9].
40. About WEG’s concerns about an excluded email address in the public notice for the Cowboy CDP application, Bureau staff testified that



For this permit, the initial 30-day comment period had concluded on July 2, 2020, over 8 months before this comment was received. Therefore, the newspaper notice was not republished, and another 30-day comment initial notice was not done for the permit action. [The Bureau's] re-publication of the public notice for several other permits did not generate any additional public interest from any other party for those permits. These results suggest that WildEarth Guardians' assertion that the omission of an email address prevented other interested parties from providing comment is unlikely to be correct. The public notice from the first comment period and the draft documents for the 30-day analysis period were posted to [the Bureau's] website on February 23, 2021, and therefore were available to the public. The [Bureau] has updated its legal notices for air quality permit proposals, so that future legal notices include an email address for comment submissions, in recognition of the public health risks of COVID-19.

[Cowboy CDP: NMED Exhibit 27 at 9; AR No. 86, Bates 3208-3211].

41. About WEG's concerns about an excluded email address in the public notice for the Jayhawk CS application, Bureau staff testified that

For this permit, the initial 30-day comment period had concluded six months before this comment was received. Therefore, the newspaper notice was not republished, and another 30-day comment initial notice was not done for these permits. [The Bureau's] re-publication of the public notice for several other permits did not generate any additional public interest from any other party for those permits. That result on the other permits indicates that WildEarth Guardians' assertion that the omission of an email address prevented other interested parties from providing comment is unlikely to be correct. The public notice for the first comment period and the draft documents for the 30-day analysis period were posted to [The Bureau's] website on November 3, 2020, and on May 27, 2021, respectively, and therefore were available to the public.

[Jayhawk CS: NMED Exhibit 31 at 9-10].

42. Mr. Nichols' believed that the public notices for the Facilities should be republished is based

on "fairness, public fairness, [and] a duty to the public". Tr. Vol. 2, 322:7-9 (Nichols).

43. Regarding WEG's SSM/M concerns, Mr. Nichols opined that with an annual limit, rather than

limits on operational parameters, the annual limits are not practically enforceable and will not actually be complied with. He explained that without a limit on the number of flaring of SSM/M events the annual emission limits will not actually be complied with. Tr. Vol. 2, 318:10-21 (Nichols).

44. Related to the SSM/M concern, Mr. Nichols testified that there is the lack of a methodology or specific requirement for how companies must measure the volume of VOC emissions. Tr. Vol. 2, 319:2-10 (Nichols).
45. On cross-examination, however, Mr. Nichols acknowledged that WEG did not propose any of its own SSM/M conditions that it believed would be necessary to make the current annual and hourly limits on the permits enforceable. Tr. Vol. 2, 324:25-326:17 (Nichols).
46. Finally, with regards to environmental justice, Mr. Nichols testified that WEG is concerned that “substantively environmental justice was not achieved.” Particularly, environmental justice was not achieved around the issue of cumulative impacts related to ozone pollution. Tr. Vol. 2, 317:11-24 (Nichols).
47. WEG believes that environmental justice provides NMED additional grounds to condition or deny an air permit. Tr. Vol. 2, 327:11-16 (Nichols).
48. The Permittee objected to WEG’s testimony on the grounds that WEG’s witness was not qualified to draw the legal conclusion that the Bureau did not fulfill its duty about the issue of environmental justice. The Hearing Officer sustained the objection. Tr. Vol. 2, 341:13-21.
49. NMED presented several witnesses at the hearing. Their background and generally applicable testimony are addressed below while application-specific testimony is addressed in the application’s section of this submittal.
50. NMED’s modeling witness, Eric Peters, has been with NMED since 1997 and has analyzed and performed modeling for over 100 projects. He holds a bachelor’s degree in Mechanical Engineering and a master’s degree in Environmental Engineering. NMED Ex. 7.

51. NMED's modeling witness, Dr. Angela Raso, has been with NMED as a Dispersion Modeler since 2018. She holds a bachelor's degree in Chemistry and a Ph.D. in Analytical Chemistry. NMED Ex. 14.
52. NMED's witness, Rhonda Romero, is the Staff Manager for the Air Quality Bureau ("AQB") Minor Source Permit Program. She holds two Bachelors' degrees in environmental geology and natural sciences geology. Ms. Romero has worked for the Department in the Air Quality Bureau ("AQB") since 2013. NMED Ex. 2.
53. NMED's witness, Kathleen Primm, is the Supervisor for the NSR Construction Permit Program at NMED's AQB. She holds a bachelor's degree in agriculture. Ms. Primm has worked at NMED since 2008 in various positions within the AQB. NMED Ex. 16.
54. NMED's witness, Dr. James Nellessen, is the Supervisor of the PSD Unit of Major Source Permitting at NMED's AQB. He has worked for NMED in the AQB since 2014. He holds a bachelor's in biology, a master's in plant pathology, a Ph.D. in botany and completed post-doctoral work in botany. NMED Ex. 18.
55. Dr. Nellessen's written testimony addressed a comment about the lack of HAP emission limits and stated that "Air Quality permits do not contain emission limits for [HAPs] because there are no ambient air quality standards for HAPs." NMED Ex. 17 at 4. He testified that HAPs are currently regulated under the National Emission Standards for Hazardous Air Pollutants ("NESHAP") under 40 C.F.R. 61 and 63. *Id.* Dr. Nellessen also addressed WEG's concerns around whether Title V operating permits have been submitted. He testified that Title V operating permits are not required until "a source commences operation as a Part 70 [Title V] source" then a timely application is made within twelve months of that trigger. *Id.* at 8. Dr. Nellessen stated that AQB has received timely Title V applications from the seven XTO

sources subject to Part 70: Bulldog, Longhorn, Tiger, Spartan, Cowboy, Maverick and Wildcat. Id. at 9.

56. NMED's witness, Dr. Kirby Sue Olson, is the Major Sources Permitting Program Manager for NMED's AQB. Dr. Olson has worked with the AQB since 2014. Dr. Olson has a bachelor's in biology and a Ph.D. in biological oceanography. NMED Ex. 20.

57. Dr. Olson's written testimony addressed hearing notice and the conditions in the permits. NMED Ex. 19. Dr. Olson testified that notice was published appropriately in English and Spanish in three different newspapers, as well as notices distributed via email to those who had expressed interest in the permits. Id. at 3. Dr. Olson testified about the structure of conditions on the construction permits and how they are based on a common template used across all Facilities then modified for each site. Id. at 5-6. Dr. Olson refuted a comment made by WEG that the Cowboy Tiger, Spartan, and Maverick Facilities should have been aggregated. Id. at 6. Dr. Olson noted that the criteria for aggregation with nearby sources was not met for those Facilities, therefore individual permits are appropriate. Id. at 6-7. Finally, Dr. Olson discussed NMED's authority to determine control efficiencies for types of air pollution controls as it relates to the special 75% reduction in fugitive emissions which was permitted for Cowboy. Id. at 8-9.

58. NMED's witness, Urshula Bajracharya, is a Major Source Permit Writer and Specialist. Ms. Bajracharya has been with NMED in her current role since 2019. She holds a bachelor's in environmental science and a master's in earth science. NMED Ex. 26. Ms. Bajracharya provided testimony for the Bulldog, Longhorn, Spartan and Tiger Facilities.

59. NMED's witness, Vanessa Springer, is an Environmental Scientist with NMED and has been in her position since 2019. She holds a bachelor's and a master's degree in Natural Resources. NMED Ex. 28. Ms. Springer provided testimony on the Cowboy facility.
60. NMED's witness, Julia Kuhn, is a Title V Permit Specialist for NMED. NMED Ex. 32 at 1. She has been with NMED since 2018. Ms. Kuhn holds a bachelor's degree in biology and a master's in biology with a concentration in biotechnology. NMED Ex. 33. She provided testimony on the Jayhawk and Maverick Facilities.
61. NMED's witness, Melinda Owens, is the Title V Permit Program Manager. She has worked for NMED since 2007. NMED Ex. 35. Ms. Owens holds an associate degree in pre-engineering and a bachelor's degree in chemical engineering. Id. Ms. Owens provided testimony on the Wildcat facility.
62. Throughout the hearing, public comment was held at various and at previously scheduled times and the public was permitted to cross-examine any of the technical witnesses. Importantly, the parties rested their cases, and the hearing went into recess until 4:45 p.m. October 26, 2021 to take additional public comment.

#### **b. Facility Specific Findings of Fact**

##### **Bulldog Compressor Station**

63. On August 31, 2020, XTO submitted an application to revise NSR Permit No. 8153. [Bulldog AR 1, 0003]
64. The application proposes various modifications and revisions that include (1) updates in throughputs, (2) removal of certain equipment from the permit, and (3) updated equipment specifications. [Bulldog AR 7, 0273]

65. Specifically, the application includes: (1) removal of two heaters and two engines; (2) increased glycol circulation rates; (3) decreased glycol regeneration reboiler unit heat inputs; (4) removal of a flare; increased flare purge gas rates; (5) updated flare heights; (6) updated tank throughputs; (7) decreased condensate truck loading; (8) added inlet gas flaring; (9) increased steady state flaring associated with increased tank throughput and glycol circulation rates; (10) updated sources venting to the flare; (11) updated sources venting to the vapor combustion unit; (12) updated control efficiencies and emission factors for two engines; (13) updated equipment nomenclature; (14) updated facility administrative information; (15) updated low pressure separator pressures; and (16) added VOC malfunction emissions. [Bulldog AR 1, 0051]
66. Sections 6 and 7 of the application included emission calculations to demonstrate compliance with NAAQS and applicable regulations. [Bulldog AR 1 0059-0146]
67. Section 16 and Form UA4 included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Bulldog AR 1, 0230-0242].
68. The application included proof of XTO's public notices. [Bulldog AR 1, 0149-0197]
69. NMED received the application on September 25, 2020. [Bulldog AR 1, 0003]
70. NMED deemed the application administratively complete on October 23, 2020. [Bulldog AR 2, 0243]
71. NMED published its legal notice and the permit application on the Air Quality Bureau website on October 23, 2020. [Bulldog AR 21, 0388-0389]
72. NMED published its initial public notice of the application in the Carlsbad Current Argus on October 27, 2020. [Bulldog AR 4]

73. NMED issued a draft permit for Bulldog on May 28, 2021, approving the proposed permit revisions and facility modifications, with conditions. [Bulldog AR 8]
74. NMED issued a Statement of Basis for the permit application on May 28, 2021. [Bulldog AR 7]
75. The Statement of Basis identified applicable state and federal air quality regulations. [Bulldog AR 7, 0275-0277]
76. By letter dated November 24, 2020, WEG requested a public hearing on the application. [Bulldog AR 7, 0274]
77. Additionally, in the letter, WEG stated that it was concerned that neither XTO nor NMED had demonstrated that the air pollution from the proposed facility will protect the NAAQS for ozone. [Bulldog AR 9, 0333] WEG also commented on potential environmental justice issues in the permit proceeding and a potential default in compliance with New Mexico Toxic Air Pollutant permitting requirements. [Bulldog AR 9, 0339]
78. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination on the Bulldog application. Request for Hearing Determination.
79. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Bulldog Notice of Hearing and Appointment of Hearing Officer.
80. On June 28, 2021, WEG submitted its second set of comments on the application. [Bulldog AR 10] These comments (1) renewed the request for a public hearing; (2) expressed concern over the legal notice issued by NMED lacking an email address for the public to submit comments to; (3) called out the startup, shutdown, maintenance and malfunction limits as possibly unenforceable; (4) questioned whether HAPs are addressed in the SSM and

malfunction emission calculations; (5) requested disclosure of the use of gas-actuated pneumatic controllers; (6) expressed concern of NO<sub>2</sub> impacts to ambient air quality; (7) requested explanation for the compliance status of the facility; and (8) renewed concerns regarding environmental justice. [Bulldog AR 10]

81. XTO's witness, Randy Parmley, testified at the hearing that the permit application with NMED's proposed conditions, will ensure compliance with all applicable state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
82. WEG's witness, Jeremy Nichols, provided testimony at the hearing that WEG objects to approval of the permit applications because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).
83. NMED's Dr. Angela Raso was the dispersion modeler for the Bulldog Compressor Station. NMED Ex. 8 at 1.
84. Dr. Raso testified that XTO's Bulldog Compressor Station modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 8 at 2.
85. Dr. Raso further testified that if the facility operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 8 at 2.
86. NMED's witness Urshula Bajracharya was the permit writer for the Bulldog Compressor Station. NMED Am. Ex. 21 at 1.
87. Ms. Bajracharya testified that the Bulldog facility application demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 198:20-23 (Bajracharya); NMED Am. Ex. 21 at 16.



88. If the facility operates in accordance with the terms and conditions of the draft permit, it will comply with all applicable federal and state air quality regulations and will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Am. Ex. 21 at 16; NMED Ex. 8 at 2; XTO Ex. 5 at 38.

### **Jayhawk Compressor Station**

89. On September 24, 2020, XTO submitted an application to revise NSR Permit No. 8152.

[Jayhawk AR 1, 0003]

90. On September 20, 2021, XTO submitted an updated application. [Jayhawk AR 5, 217-427; AR 45, 693-694]

91. The application proposes various modifications to Jayhawk and revisions to the permit that include updates in throughputs, removal of certain equipment, and updated equipment specifications. [Jayhawk AR 13, 465]

92. Specifically, the application includes: (1) removal of two heaters and two engines; (2) increased glycol circulation rates; (3) decreased glycol regeneration reboiler unit heat inputs; (4) removal of a flare; (5) increased flare purge gas rates; (6) updated flare heights; (7) updated tank throughputs; (8) decreased condensate truck loading; (9) added inlet gas flaring; (10) increased steady state flaring associated with increased tank throughput and glycol circulation rates; (11) updated sources venting to the flare; (12) updated sources venting to the vapor combustion unit; (13) updated control efficiencies and emission factors for two engines; (14) updated equipment nomenclature; (15) updated facility administrative information; (16) updated low pressure separator pressures; and (17) added VOC malfunction emissions. [Jayhawk AR 5, 249]

93. Sections 6 and 7 of the application included emission calculations to demonstrate compliance with NAAQS and applicable regulations. [Jayhawk AR 5, 257-343]
94. Section 16 and Form UA4 of the application included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Jayhawk AR 5, 416-427]
95. The application included proof of XTO's public notices. [Jayhawk AR 1, 133-169]
96. NMED received the application on September 30, 2020. [Jayhawk AR 1, 003]
97. NMED deemed the application administratively complete on October 29, 2020. [Jayhawk AR 8, 430-31]
98. NMED posted its public notice and the permit application on the Air Quality Bureau website on November 3, 2020. [Jayhawk AR 28, 388-389]
99. NMED published its initial public notice of the application in the Hobbs News-Sun on November 3, 2020. [Jayhawk AR 10]
100. By letter dated December 3, 2020, WEG requested a public hearing on the application. [Jayhawk AR 13, 466] WEG commented that it was concerned that neither XTO nor NMED had demonstrated that the air pollution from the proposed facility will protect the NAAQS for ozone. [Jayhawk AR 16, 0575] WEG also commented on potential environmental justice issues in the permit proceeding and a potential default in compliance with New Mexico Toxic Air Pollutant permitting requirements. [Jayhawk AR 16, 581]
101. NMED issued a draft permit for Jayhawk on May 25, 2021, approving the proposed permit revisions and facility modifications, with conditions. [Jayhawk AR 14]
102. NMED issued a Statement of Basis for the permit application on May 27, 2021. [Jayhawk AR 13]

103. The Statement of Basis identified applicable state and federal air quality regulations and reasons for permit conditions. [Jayhawk AR 13, 467-471]
104. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.
105. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Jayhawk Notice of Hearing and Appointment of Hearing Officer.
106. On June 28, 2021, WEG submitted a second set of comments on the application. [Jayhawk AR 17] These comments (1) renewed the request for a public hearing; (2) expressed concern over the legal notice issued by NMED lacking an email address for the public to submit comments to; (3) stated that the startup, shutdown, maintenance and malfunction limits were possibly unenforceable; (4) questioned whether HAPs are addressed in the SSM and malfunction emission calculations; (5) requested disclosure of the use of gas-actuated pneumatic controllers; (6) expressed concern of NO<sub>2</sub> impacts to ambient air quality; (7) requested explanation for the compliance status of the facility; and (8) renewed concerns regarding environmental justice. [Jayhawk AR 17]
107. XTO's Randy Parmley testified at the hearing that Jayhawk, if operated in conformance with the permit application and the conditions proposed by NMED will comply with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
108. WEG's Jeremy Nichols testified at the hearing that WEG objects to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).

109. NMED's Dr. Angela Raso was NMED's dispersion modeler for the Jayhawk Compressor Station. NMED Ex. 10 at 1.
110. Dr. Raso testified that XTO's Jayhawk Compressor Station modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 10 at 2.
111. Dr. Raso further testified that if the facility is operated in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 10 at 2.
112. NMED's witness Julia Kuhn was the permit writer for the Jayhawk Compressor Station. NMED Ex. 31 at 1.
113. Ms. Kuhn testified that the Jayhawk application demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 201:12-16 (Kuhn); NMED Ex. 31 at 19-20.
114. If the facility operates in accordance with the terms and conditions of the draft permit, it will comply with all applicable federal and state air quality regulations and will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 31 at 19-20; NMED Ex. 10 at 2; XTO Ex. 5 at 38.

### **Longhorn Compressor Station**

115. On September 24, 2020, XTO submitted an application to revise NSR Permit No. 8349M1. [Longhorn AR 1, 0003]
116. The application proposed various modifications to Longhorn and revisions to the permit including updates in throughputs, removal of certain equipment, and updated equipment specifications. [Longhorn AR 7, 0252]

117. Specifically, the application includes: (1) removal of two heaters and two engines; (2) increased glycol circulation rates; (3) decreased glycol regeneration reboiler unit heat inputs; (4) removal of a flare; (5) increased flare purge gas rates; (6) updated flare heights; (7) updated tank throughputs; (8) decreases in condensate truck loading; (9) addition of inlet gas flaring; (10) increased steady state flaring associated with increased tank throughput and glycol circulation rates; (11) updates on sources venting to the flare; (12) updates to sources venting to the vapor combustion unit; (13) updated control efficiencies and emission factors for two engines; and (14) included additional allowable VOC emissions during malfunctions. [Longhorn AR 1, 047]
118. Sections 6 and 7 of the application include emission calculations to demonstrate compliance with NAAQS and applicable regulations. [Longhorn AR 1, 0054-0141]
119. Section 16 of the application and Form UA4 include a modeling report to demonstrate compliance with NAAQS and PSD increments. [Longhorn AR 1, 210-222]
120. The application included proof of XTO's public notices. [Longhorn AR 1, 0144-0177]
121. NMED received the application on September 30, 2020. [Longhorn AR 1, 0003]
122. NMED deemed the application administratively complete on October 30, 2020. [Longhorn AR 2, 0223-25]
123. NMED published its public notice and the permit application of the Air Quality Bureau website on December 17, 2020. [Longhorn AR 22, 0933]
124. NMED published its initial public notice of the application in the Carlsbad Current Argus on November 3, 2020. [Longhorn AR 4]
125. By letter dated December 3, 2020, WEG requested a public hearing. [Longhorn AR 7, 0253] WEG commented that it was concerned that neither XTO, nor NMED, had demonstrated

that the air pollution from the proposed facility will protect the NAAQS for ozone. [Longhorn AR 9, 0312] WEG also commented on potential environmental justice issues in the permit proceeding and a potential default in compliance with New Mexico Toxic Air Pollutant permitting requirements. [Longhorn AR 9, 318-19]

126. NMED issued a draft permit for Longhorn on May 28, 2021, approving the application subjected to conditions in the draft permit. [Longhorn AR 8]

127. NMED issued a Statement of Basis for the draft permit on May 28, 2021. [Longhorn AR 7]

128. The Statement of Basis identified applicable state and federal air quality regulations and explained the basis for conditions in NMED's draft permit. [Longhorn AR 7, 0254-0257]

129. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.

130. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Longhorn Notice of Hearing and Appointment of Hearing Officer.

131. On June 28, 2021, WEG submitted a second set of comments on the application. [Longhorn AR 10] These comments (1) renewed the request for a public hearing; (2) expressed concern over the legal notice issued by NMED lacking an email address for the public to submit comments to; (3) called out the startup, shutdown, maintenance and malfunction limits as possibly unenforceable; (4) questioned whether HAPs are addressed in the SSM and malfunction emission calculations; (5) requested disclosure of the use of gas-actuated pneumatic controllers; (6) expressed concern of NO<sub>2</sub> impacts to ambient air quality; (7) requested explanation for the compliance status of the facility; and (8) renewed concerns regarding environmental justice. [Longhorn AR 10]

132. XTO's Randy Parmley testified at the hearing that Longhorn, if operated in conformance with the permit application and the conditions proposed by NMED, will ensure compliance with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
133. WEG's Jeremy Nichols testified at the hearing that WEG objects to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).
134. NMED's Eric Peters was the dispersion modeler for the Longhorn Compressor Station. NMED Ex. 5 at 1.
135. Mr. Peters testified that the Longhorn Compressor Station modeling submitted by XTO was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 5 at 2.
136. Mr. Peters further testified that if the facility operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 5 at 2.
137. NMED's witness Urshula Bajracharya was the permit writer for the Longhorn Compressor Station. NMED Am. Ex. 22 at 1.
138. Ms. Bajracharya testified that the Longhorn application demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 198:20-23 (Bajracharya); NMED Am. Ex. 22 at 16.
139. If the facility operates in accordance with the terms and conditions of the draft permit, it will comply with all applicable federal and state air quality regulations and will not cause or

contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Am. Ex. 22 at 16; NMED Ex. 5 at 2; XTO Ex. 5 at 38.

**Cowboy CDP**

140. On April 24, 2020, XTO submitted an application revise NSR permit 7877, [Cowboy AR 8, 0488]
141. NMED received the application on April 29, 2020. [Cowboy AR 8, 0488]
142. NMED deemed the application administratively complete on May 20, 2020. [Cowboy AR 19, 0878-0883]
143. After the initial determination of completeness, NMED requested numerous changes to equipment and verifications, warranting submission of a revised application and modeling. [Cowboy AR 62, 2566-2571].
144. XTO submitted a revised application, including revised modeling, on February 18, 2021. [Cowboy AR 1, 0001]
145. The revised application proposed various modifications to Cowboy and revisions to the permit including: (1) addition of selective catalytic reduction to several heaters; (2) removal of two heaters; (3) reduction in size capacity of floating roof tanks, addition of truck loading of slop oil; (4) increases in startup, shutdown, and maintenance and malfunction emissions; (5) updated emission speciation profiles; (6) updated fugitive counts; (7) updated tank throughputs; (8) additional emergency generators; (9) updated equipment nomenclature; (10) demonstrated compliance with NSPS Subpart OOOOa; (11) consolidated tank landing emissions; and (12) additional malfunction emissions. [Cowboy AR 1, 0036]
146. Sections 6 and 7 of the revised application include emission calculations to demonstrate compliance with NAAQS and applicable regulations. [Cowboy AR 1, 0044-0257]



147. Section 16 of the revised application and Form UA4 included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Cowboy AR 1, 0335-0348]
148. The application included proof of XTO's public notices. [Cowboy AR 1, 0263-0302]
149. NMED posted its initial public notice and the permit application on the Air Quality Bureau website on May 29, 2020. [Cowboy AR 21, 0885-0886]
150. NMED issued an initial draft permit on February 22, 2021, approving modification of Cowboy and revising the NSR permit, with conditions. [Cowboy AR 82]
151. NMED posted the revised application documents on the Air Quality Bureau website on February 23, 2021. [Cowboy AR 86, 3208-3211]
152. NMED issued a revised draft permit on September 16, 2021, approving the requested modification of Cowboy and revising the NSR permit, with conditions. [Cowboy AR 2-3]
153. NMED issued a Statement of Basis for the draft permit on September 16, 2021. [Cowboy AR 4]
154. The Statement of Basis identified applicable state and federal air quality regulations in NMED's Statement of Basis. [Cowboy AR 4, 0410-0415]
155. NMED published its initial public notice for the facility in the Carlsbad Current Argus on June 2, 2020, 2020. [Cowboy AR 22]
156. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.
157. By letter dated June 20, 2020, WEG requested a public hearing on the Cowboy application. [Cowboy AR 4, 0409] WEG commented that it was concerned that issuance of this permit would cause or contribute to violations of ozone NAAQS. [Cowboy AR 24]

158. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Cowboy Notice of Hearing and Appointment of Hearing Officer.
159. XTO's Randy Parmley testified at the hearing that operation of Cowboy in accordance with the NMED draft permit will ensure compliance with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
160. WEG's Jeremy Nichols testified at the hearing that WEG objects to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).
161. NMED's Eric Peters was NMED's dispersion modeler for the Cowboy CDP. NMED Ex. 3 at 1.
162. Mr. Peters testified that XTO's Cowboy CDP modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 3 at 2.
163. Mr. Peters further testified that if the facility operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 3 at 2.
164. NMED's witness Vanessa Springer was the permit writer for the Cowboy CDP. NMED Ex. 27 at 1.
165. Ms. Springer testified that the Cowboy application demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 209:6-9 (Springer); NMED Ex. 27 at 14-15.

166. If the facility operates in accordance with the terms and conditions of the draft permit, it will meet all applicable federal and state air quality regulations and will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 27 at 14-15; NMED Ex. 3 at 2; XTO Ex. 5 at 38.

### **Wildcat Compressor Station**

167. On June 2, 2020, XTO submitted an application to revise NSR Permit No. 7474M1. [Wildcat AR 2, 052]

168. The application proposed various modifications at Wildcat and revisions to the permit including updates in throughputs, removal of certain equipment, and updated equipment specifications. [Wildcat AR 18, 278-79]

169. Specifically, the application included: (1) removal from the permit of two heaters and two engines; (2) increased glycol circulation rates; (3) increased glycol circulation rates; (4) increased flare purge gas rates; updated flare heights; (5) updated tank throughputs; (6) updated control efficiencies and emission factors for two engines; and (7) updated heat inputs on the reboilers. [Wildcat AR 2, 078]

170. Sections 6 and 7 of the application included emission calculations to demonstrate compliance with NAAQS and applicable regulations. [Wildcat AR 2, 086-144]

171. Section 16 of the application and Form UA4 included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Wildcat AR 2, 216-228]

172. The application included proof of XTO's public notices. [Wildcat AR 2, 148-183]

173. NMED deemed the application administratively complete on July 8, 2020. [Wildcat AR 8, 246-52]

174. NMED posted public notice of the application on the Air Quality Bureau website on July 7, 2020. [Wildcat AR 22, 351-53]
175. NMED published its initial public notice for the facility in the Carlsbad Current-Argus on July 17, 2020. [Wildcat AR 11,0255-57]
176. By letter dated July 27, 2020, WEG requested a public hearing on the Wildcat application. [Wildcat AR 12] WEG commented that it was concerned that neither XTO nor NMED had demonstrated that the air pollution from the proposed facility will protect the NAAQS for ozone. [Wildcat AR 12, 259]
177. On February 19, 2021, NMED issued a permit approving the application for Wildcat.
178. On March 3, 2021, NMED withdrew the permit for being “procedurally flawed.” [Wildcat AR 15, 271]; NMED Am. Ex. 34 at 4.
179. The procedural flaw was a failure of NMED to notify WEG of the availability of NMED’s analysis of the permit as required by 20.2.72.206.B(2) NMAC. [Wildcat AR 15, 271]
180. On March 2, 2021, NMED issued a Statement of Basis for the draft permit. [Wildcat AR 18]
181. The Statement of Basis identified applicable state and federal air quality regulations and stated the basis for the conditions in the draft permit. [Wildcat AR 18, 280-285]
182. On April 1, 2021, WEG submitted a second set of comments on the application. [Wildcat AR 17] These comments (1) renewed the request for a public hearing; (2) expressed concern over the legal notice issued by NMED lacking an email address for the public to submit comments to; (3) called out the startup, shutdown, maintenance and malfunction limits as possibly unenforceable; (4) questioned whether HAPs are addressed in the SSM and malfunction emission calculations; (5) requested disclosure of the use of gas-actuated

pneumatic controllers; (6) expressed concern of NO<sub>2</sub> impacts to ambient air quality; (7) requested explanation for the compliance status of the facility; and (8) expressed concerns regarding environmental justice. [Wildcat AR 17]

183. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.

184. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Wildcat Notice of Hearing and Appointment of Hearing Officer.

185. XTO's expert, Randy Parmley, testified at the hearing that operation of Wildcat in conformance with the permit application and the provisions of the draft permit will ensure compliance with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).

186. WEG's Jeremy Nichols testified at the hearing that WEG objects to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).

187. NMED's Dr. Angela Raso was NMED's dispersion modeler for the Wildcat Compressor Station. NMED Ex. 13 at 1.

188. Dr. Raso testified that the XTO modeling for the Wildcat Compressor Station modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 13 at 2.

189. Dr. Raso further testified that if the facility operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 13 at 2.

190. NMED's witness Melinda Owens was the permit writer for the Wildcat Compressor Station. NMED Am. Ex. 34 at 1.
191. Ms. Owens testified that the application for the Wildcat facility demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 214:5-7 (Owens); NMED Am. Ex. 34 at 14.
192. If the facility operates in compliance with the terms and conditions of the draft permit, it will meet all applicable federal and state air quality regulations and will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Am. Ex. 34 at 14; NMED Ex. 13 at 2; XTO Ex. 5 at 38.

#### **Maverick Compressor Station**

193. On March 3, 2021, XTO submitted an application to revise NSR Permit 7565-M1. [Maverick AR 1, 007]
194. The application proposed various modifications at Maverick and permit revisions that include updates in throughputs, removal of certain equipment, and updated equipment specifications. [Maverick AR 13, 662-63]
195. Specifically, the application included: (1) removal of two heaters and two engines; (2) increased glycol circulation rates; (3) decreased glycol regeneration reboiler unit heat inputs; (4) increased SSM hours for the dehydrators; (5) increased flare purge gas rates; (6) updated flare heights; (7) updated tank throughputs; (8) decreased condensate truck loading; (9) addition of inlet gas flaring; (10) increased steady state flaring associated with increased tank throughput and glycol circulation rates; (11) updates on sources venting to the flare; (12) updates to sources venting to the vapor combustion unit; (13) updated control efficiencies and emission factors for two engines; (14) updated equipment nomenclature; (15) updated facility

- administrative information; (16) updated low pressure separator pressures; and (17) additional authorized VOC malfunction emissions. [Maverick AR 3, 359]
196. Sections 6 and 7 of the application included emission calculations to demonstrate compliance with NAAQS and applicable regulations. [Maverick AR 3, 367-534]
197. Section 16 of the application and Form UA4 included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Maverick AR 3, 606-618]
198. The application included proof of XTO's public notices. [Maverick AR 1, 245-279]
199. NMED received the application on March 8, 2021. [Maverick AR 1, 007]
200. NMED deemed the application administratively complete on April 7, 2021. [Maverick AR 6, 621-26]
201. NMED posted its initial public notice on the Air Quality Bureau website on April 7, 2021. [Maverick AR 27, 823-824]
202. NMED posted its revised public notice on the Air Quality Bureau website on April 19, 2021. [Maverick AR 28, 825-826].
203. NMED published its initial public notice for the facility in the Carlsbad Current Argus on April 9, 2020. [Maverick AR 9]
204. NMED published a second public notice for the facility in the Carlsbad Current Argus on April 20, 2021. The second notice included the permit writer's email address. [Maverick AR 10]
205. By letter dated May 20, 2021, WEG requested a public hearing on the Maverick application. [Maverick AR 16] WEG (1) requested a draft permit for Maverick; (2) requested the full analysis done by the NMED with regards to the permit; (3) requested NMED again reissue its public notice to include comment deadlines; (4) asserted that the proposed permit

will cause or contribute to a violation of ozone NAAQS; (5) questioned whether SSM/M emissions were enforceable as a practical matter; (6) questioned whether appropriate air quality monitoring stations were chosen for background modeling concentrations; (7) requested a correction that XTO's facility is within 50 km of another state; and (8) requested NMED reassess PSD applicability in light of reported excess emissions at the facility. [Maverick AR 16]

206. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.

207. On June 9, 2021, NMED issued a draft permit for Maverick, proposing to approve the modifications and permit revisions requested in the application, with conditions. [Maverick AR 14]

208. NMED issued a Statement of Basis for the permit application on June 9, 2021. [Maverick AR 13]

209. The Statement of Basis identified applicable state and federal air quality regulations and explained the basis for the conditions in the draft permit. [Maverick AR 13, 665-669]

210. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Maverick Notice of Hearing and Appointment of Hearing Officer.

211. On July 9, 2021, WEG submitted a second set of comments on the application. [Maverick AR 17] These comments (1) renewed the request for a public hearing; (2) expressed concern over SSM/M emission limits as not being enforceable as a practical matter; (3) requested disclosure of the use of gas-actuated pneumatic controllers; and (4) questioned the adequacy of the assessed impacts of NO<sub>2</sub> on ambient air quality. [Maverick AR 17]



212. XTO's expert, Randy Parmley, testified at the hearing that operation of Maverick in conformance with the permit application and the conditions drafted by NMED will ensure compliance with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
213. WEG's Jeremy Nichols testified at the hearing that WEG objected to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).
214. NMED's Eric Peters was NMED's dispersion modeler for the Maverick Compressor Station. NMED Ex. 4 at 1.
215. Mr. Peters testified that XTO's Maverick Compressor Station modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex.4 at 2.
216. Mr. Peters further testified that if the facility operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 4 at 2.
217. NMED's witness Julia Kuhn was the permit writer for the Maverick Compressor Station. NMED Ex. 32 at 1.
218. Ms. Kuhn testified that the application for the Maverick facility demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 201:8-16 (Kuhn); NMED Ex. 32 at 18.
219. If the facility operates in accordance with the terms and conditions of the draft permit, it will meet all applicable federal and state air quality regulations and will not cause or contribute

to any concentrations above state or federal ambient air quality standards or PSD increments.  
NMED Ex. 32 at 18; NMED Ex. 4 at 2; XTO Ex. 5 at 38.

### **Spartan Compressor Station**

220. On March 3, 2021, XTO submitted an application to revise NSR Permit No. 7681M1.  
[Spartan AR 1, 005]
221. The application proposed various modifications to Spartan and revisions the permit, including updates in throughputs, removal of certain equipment, and updated equipment specifications. [Spartan AR 10, 327]
222. Specifically, the application includes: (1) removal of two heaters and two engines; (2) increased glycol circulation rates; (3) decreased glycol regeneration reboiler unit heat inputs; (4) removal of a flare; (5) increased flare purge gas rates; updated flare heights; (6) updated tank throughputs; (7) decreased condensate truck loading; (8) addition of inlet gas flaring; (9) increased steady state flaring associated with increased tank throughput and glycol circulation rates; (10) updates on sources venting to the flare; (11) updates to sources venting to the vapor combustion unit; (12) updated control efficiencies and emission factors for two engines; (13) updated equipment nomenclature; (14) updated facility administrative information; (15) updated low pressure separator pressures; and (16) additional VOC malfunction emissions.  
[Spartan AR 1, 044]
223. Sections 6 and 7 of the application included emission calculations to demonstrate compliance with applicable emission regulations. [Spartan AR 1, 050-215]
224. Section 16 of the application and Form UA4 included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Spartan AR 1, 265-281]
225. The application included proof of XTO's public notices. [Spartan AR 1, 219-254]

226. NMED received the application on March 8, 2021. [Spartan AR 1, 005]
227. NMED deemed the application administratively complete on April 6, 2021. [Spartan AR 2, 288-89]
228. NMED posted its initial public notice and the application on the Air Quality Bureau website on April 7, 2021. [Spartan AR 24, 436]
229. NMED posted its revised public notice on the Air Quality Bureau website on April 26, 2021. [Spartan AR 25, 437].
230. NMED published its initial public notice for the application in the Carlsbad Current Argus on April 8, 2020. [Spartan AR 6]
231. NMED published a second public notice in the Carlsbad Current Argus on April 24, 2021. The second notice included the permit writer's email address for comments to be submitted to. [Spartan AR 7]
232. By letter dated May 24, 2021, WEG requested a public hearing on the Spartan application. [Spartan AR 10, 328] WEG requested NMED (1) release its full analysis on the permit application; (2) release a draft version of the permit; (3) provide an additional comment period; and (4) provide a public hearing. [Spartan AR 12, 388] WEG also commented that (1) the legal notice issued by NMED lacked a comment period deadline; (2) expressed concern about compliance with ozone NAAQS; (3) questioned Title V permitting compliance; and (4) questioned whether SSM/M emission limits were enforceable as a practical matter. [Spartan AR 12]
233. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.
234. On June 11, 2021, NMED issued a draft permit for Spartan approving the proposed modifications and permit revisions, with conditions. [Spartan AR 11]

235. NMED issued a Statement of Basis on June 11, 2021. [Spartan AR 10]
236. The Statement of Basis identified applicable state and federal air quality regulations. [Spartan AR 10, 329-332].
237. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Spartan Notice of Hearing and Appointment of Hearing Officer.
238. On July 12, 2021, WEG submitted a second set of comments on the application. [Spartan AR 13] These comments (1) expressed additional concern on the requested SSM/M emission limits; (2) requested disclosure of emissions from gas-actuated pneumatic controllers; and (3) expressed concern of NO<sub>2</sub> impacts to ambient air quality. [Spartan AR 13]
239. XTO's expert, Randy Parmley, testified at the hearing that operation of Spartan in conformance with the permit application and that the draft permit, ensure compliance with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
240. WEG's Jeremy Nichols testified at the hearing that WEG objects to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).
241. NMED's Dr. Angela Raso was NMED's dispersion modeler for the Spartan Compressor Station. NMED Ex. 9 at 1.
242. Dr. Raso testified that the Spartan modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 9 at 2.

243. Dr. Raso further testified that if Spartan operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 9 at 2.
244. NMED's witness Urshula Bajracharya was the permit writer for the Spartan Compressor Station. NMED Am. Ex. 23 at 1.
245. Ms. Bajracharya testified that the Spartan application demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 198:20-23 (Bajracharya); NMED Am. Ex. 23 at 17.
246. If the facility operates in accordance with the terms and conditions of the draft permit, it will comply with all applicable federal and state air quality regulations and will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Am. Ex. 23 at 17; NMED Ex. 9 at 2; XTO Ex. 5 at 38.

#### **Tiger Compressor Station**

247. On March 3, 2021, XTO submitted an application to revise NSR Permit No. 7623 M2. [Tiger AR 1, 005]
248. The application proposed various modifications to Tiger and revisions to the permit including updates in throughputs, removal of certain equipment, and updated equipment specifications. [Tiger AR 10, 326]
249. Specifically, the application included: (1) removal of two heaters and two engines; (2) increased glycol circulation rates; (3) decreased glycol regeneration reboiler unit heat inputs; (4) removal of a flare; (5) increased flare purge gas rates; (6) updated flare heights; (7) updated tank throughputs; (8) decreased condensate truck loading; (9) added inlet gas flaring; (10) increased steady state flaring associated with increased tank throughput and glycol circulation

rates; (11) updated sources venting to the flare; (12) updated sources venting to the vapor combustion unit; (13) updated control efficiencies and emission factors for two engines; (14) updated equipment nomenclature; (15) updated facility administrative information; (16) updated low pressure separator pressures; and (17) increased proposed VOC malfunction emissions. [Tiger AR 1, 043]

250. Sections 6 and 7 of the application included emission calculations to demonstrate compliance with NAAQS and PSD increments, and applicable regulations. [Tiger AR 1, 049-218]

251. Section 16 of the application and Form UA4 included a modeling report to demonstrate compliance with NAAQS and applicable PSD increments. [Tiger AR 1, 267-281]

252. The application included proof of XTO's public notices. [Tiger AR 1, 222-255]

253. NMED received the application on March 8, 2021. [Tiger AR 1, 005]

254. NMED deemed the application administratively complete on April 7, 2021. [Tiger AR 2, 289-90]

255. NMED posted the application's public notice on the Air Quality Bureau website on April 8, 2021. [Tiger AR 24, 435]

256. NMED posted the application's revised public notice on the Air Quality Bureau website on April 26, 2021. [Tiger AR 25, 436].

257. NMED published its initial public notice of the application in the Carlsbad Current Argus on April 9, 2020. [Tiger AR 6]

258. NMED's second public notice was published in the Carlsbad Current Argus on April 24, 2021. [Tiger AR 7] The second public notice for the facility included an email address for comments to be submitted to. [Tiger AR 7]

259. By letter dated May 24, 2021, WEG requested a public hearing. [Tiger AR 12] WEG requested that (1) NMED release its full analysis on the permit application; (2) release a draft version of the permit; (3) provide an additional comment period; and (4) provide a public hearing. [Tiger AR 12, 387] WEG also commented that (1) the legal notice issued by NMED lacked a comment period deadline; (2) expressed concern about compliance with ozone NAAQS; (3) questioned Title V permitting compliance; (4) needed more information on gas actuated-pneumatic controllers, and (5) questioned whether SSM/M emission limits were enforceable as a practical matter. [Tiger AR 12]
260. On June 7, 2021, NMED filed a request with the Secretary for a hearing determination.
261. NMED issued a draft permit for Tiger on June 11, 2021, approving the proposed permit revisions and facility modifications, with conditions. [Tiger AR 11]
262. Additionally, NMED issued a Statement of Basis for the draft permit on June 11, 2021. [Tiger AR 10]
263. The Statement of Basis identified applicable state and federal air quality regulations and stated the basis for the conditions in the draft permit. [Tiger AR 10, 328-331]
264. On June 24, 2021, the Secretary issued a Notice of Hearing and Appointment of Hearing Officer. In that notice, the Secretary ordered a hearing and appointed a hearing officer. Tiger Notice of Hearing and Appointment of Hearing Officer.
265. On July 12, 2021, WEG submitted a second set of comments on the application. [Tiger AR 13] These comments expressed (1) additional concern around SSM/M emission limits; (2) requested disclosure of gas-actuated pneumatic controllers; and (3) expressed concern of NO<sub>2</sub> impacts to ambient air quality. [Tiger AR 13]

266. XTO's expert, Randy Parmley, testified at the hearing that operation of Tiger in conformance with the permit application draft permit will ensure compliance with all state and federal rules, state and federal NAAQS and PSD increments. Tr. Vol. 1, 112:5-14 (Parmley).
267. WEG's Jeremy Nichols testified at the hearing that WEG objects to approval of the permit application because of concerns with air quality impacts, enforceability of permit terms and conditions, and procedural requirements not being followed that afford the public an effective opportunity to weigh in on proceedings. Tr. Vol. 2, 313:2-20 (Nichols).
268. NMED's Eric Peters was the NMED dispersion modeler for the Tiger Compressor Station. NMED Ex. 6 at 1.
269. Mr. Peters testified that the Tiger Compressor Station modeling was performed in accordance with the New Mexico Modeling Guidelines. NMED Ex. 6 at 2.
270. Mr. Peters further testified that if Tiger operates in compliance with the terms and conditions of the draft permit, it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Ex. 6 at 2.
271. NMED's witness Urshula Bajracharya was the permit writer for the Tiger Compressor Station. NMED Am. Ex. 24 at 1.
272. Ms. Bajracharya testified that the Tiger application demonstrates compliance with all applicable federal and state air quality regulations. Tr. Vol. 1, 198:20-23 (Bajracharya); NMED Am. Ex. 24 at 17.
273. If Tiger operates in accordance with the terms and conditions of the draft permit, it will comply with all applicable federal and state air quality regulations and it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. NMED Am. Ex. 24 at 17; NMED Ex. 6 at 2; XTO Ex. 5 at 38.



## **V. CONCLUSIONS OF LAW**

1. The Cabinet Secretary or his designee has jurisdiction over the subject matter of the Application and the parties to this proceeding and is authorized by the Act to issue or deny permits for new and existing facilities based upon information submitted in a permit application and relevant information received during the public hearing. NMSA 1978, §74-2-7 (1972 as amended through 2003); 20.2.72.206-207 NMAC.
2. Review and approval of the eight XTO permit applications are subject to the Air Quality Control Act, NMSA 1978, Section 74-2-5 and 20.2.72 NMAC.
3. XTO met all public notice requirements of 20.2.72.203 NMAC.
4. NMED met all public notice requirements of 20.2.72 NMAC and 20.1.4 NMAC.
5. NMED met the requirements for initial public notice of the air permit application in 20.2.72.206.A(3) NMAC.
6. NMED met the requirements of 20.2.72.206.B NMAC for additional public notice for those who expressed interest in a permit.
7. NMED met the public notice requirements for a public hearing in 20.1.4.200.C(2) NMAC.
8. With regards to the Wildcat facility, the notice procedural flaw was cured when NMED withdrew the issued permit, notified WEG of the availability of NMED's analysis and initiated a new thirty-day comment period.
9. The hearing was conducted in accordance with NMED's permit public hearing procedures in 20.1.4 NMAC.
10. NMED has the authority to approve applications for construction permit revisions pursuant to 20.2.72.219 NMAC.

11. XTO has the burden of establishing its entitlement for a permit for each of the Facilities.  
20.1.4.400.A(1) NMAC.
12. XTO has met its burden of proof and demonstrated that the Facilities, after modification, will meet the applicable requirements of the N.M. Air Quality Control Act and Air Quality Control Regulations.
13. XTO has demonstrated that the Facilities, after modification, will not cause or contribute to air contaminant concentrations in excess of applicable state and federal ambient air quality standards, or applicable PSD increments.
14. NMED has the burden to establish that its proposed conditions are necessary and appropriate to assure that the Facilities meet the requirements of the N.M. Air Quality Control Act and Air Quality Control Regulations.
15. NMED has met its burden of proof.
16. WEG has the burden of proof on its objection to draft permit conditions.
17. WEG has not met its burden to demonstrate why the draft permits should not be issued or should be revised prior to issuance.
18. NMED's draft permits for the Facilities will ensure that applicable federal and state regulations will be met and authorized emissions after modification of the Facilities and that emissions will not cause or contribute to ambient air concentrations in excess of applicable state and federal ambient air quality standards and should be issued as proposed.

## **VI. RECOMMENDED FINAL ORDER**

A draft Final Order consistent with the recommendations above is attached and incorporated by reference.

Respectfully submitted,

**Gregory  
Chakalian**

Digitally signed by  
Gregory Chakalian  
Date: 2021.12.27  
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**GREGORY ARA CHAKALIAN**  
Administrative Law Judge,  
Office of Public Facilitation

## Certificate of Service

I hereby certify that on December 27, 2021, a copy of the **Hearing Officer's Report** was sent to the persons listed below:

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